

ORDINANCE No. 2019-29

ORDINANCE AUTHORIZING THE TOWNSHIP OF FLORENCE, IN THE COUNTY OF BURLINGTON, NEW JERSEY TO ENTER INTO A FINANCIAL AGREEMENT BETWEEN THE TOWNSHIP AND IPT FLORENCE WEST URBAN RENEWAL, L.L.C. FOR CERTAIN PROPERTY WITHIN THE GRIFFIN PIPE PROPERTIES REDEVELOPMENT AREA

WHEREAS, on December 1, 2010, following a recommendation of the Township of Florence (the "**Township**") Planning Board (the "**Planning Board**"), the Mayor and the Township Council of the Township of Florence (the "**Governing Body**") adopted a Resolution designating the properties located at Block 179, Lots 1.02, 1.03, 1.04, 1.05 and Block 156.01, Lot 90 on the Official Tax Maps of the Township (the "**Griffin Pipe Properties Redevelopment Area**" or "**Redevelopment Area**") as an "area in need of redevelopment" pursuant to the Redevelopment Law and authorizing and directing the Planning Board to prepare a redevelopment plan for the Griffin Pipe Properties Redevelopment Area; and

WHEREAS, in accordance with the procedures and standards set forth in the Redevelopment Law, on December 7, 2016, the Township Council finally adopted an ordinance approving a redevelopment plan for the Griffin Pipe Properties Redevelopment Area (the "**Plan**" or the "**Redevelopment Plan**"); and

WHEREAS, among other things, the Redevelopment Plan established permitted uses and development standards for redevelopment within the Redevelopment Area; and

WHEREAS, IPT Florence West Urban Renewal LLC (the "**Entity**") is the owner of a portion of the Griffin Pipe Properties Redevelopment Area, identified as Block 179, Lots 1.02, 1.03, 1.04 and 1.05 ("**Property**"); and

WHEREAS, the Entity has proposed the redevelopment of the Property which it currently or will shortly own and the construction of a facility on the Property consisting of an office, warehouse and distribution center and other uses permitted by applicable zoning and the Redevelopment Plan (the "**Project**"); and

WHEREAS, the Property has previously received necessary land use approvals for the Project and will apply to the Township Planning Board for any amendments to such approvals, if required, all of which will be in accord the Redevelopment Plan; and

WHEREAS, the Entity will construct, or cause to be constructed on the Property certain improvements (the "**Improvements**") consisting of facilities that are normally associated with such projects as shown on the approved plans and the exhibits to this Agreement; and

WHEREAS, the Improvements will consist, more or less, of a distribution building measuring approximately 508,200 square feet, as shown on the concept plan (the "**Concept Plan**")

WHEREAS, in accordance with the Long-Term Tax Exemption Law, on December 4, 2019, the Entity has submitted a written application (the "**Application**") to the Municipality for approval of a tax exemption for the Improvements; and

WHEREAS, it is important to the viability of the Project for the payments in lieu of taxes thereon to be stable and ascertainable on a long-term basis; and

WHEREAS, the Application stated and demonstrated that Project would not be viable without the tax exemption due in part to the current economy and due in part to the competitive nature of the warehouse and distribution industry in Central New Jersey and Eastern Pennsylvania; and

WHEREAS, the Township has concluded that (i) although the property has been vacant for a long period, the investment to return the property to a productive asset will result in a direct benefit for the health, welfare and financial well-being of the Township because it allows for redevelopment of the Property into productive, useful and job-creating property. In addition, it has been determined that the Project will not move forward without the inducements contained in this agreement. Further:

- a. The costs associated with the tax exemption granted herein are minimal compared to the total Project cost of approximately \$18,552,600 (including “soft” costs), and the benefit created in the first several years by approximately 200 temporary construction jobs and up to 75 permanent jobs with an expected annual payroll of approximately \$3,000,000.
- b. Without the tax exemption granted herein, the Entity will not proceed with the Project. This agreement is a material inducement to the construction of the Project.
- c. The projected investment and job estimates are a material consideration to the Township in granting the exemption and the payment of the Annual Service Charge as set forth in the Financial Agreement (as hereinafter defined).

WHEREAS, to promote the viability of the Project and based on the Application, the Township desires to grant the requested tax exemption and approve a schedule of payments in lieu of taxes in accordance with the terms and provisions set forth in the financial agreement attached hereto as Exhibit A (the “**Financial Agreement**”); and

WHEREAS, the LTTE permits the use of financial agreements between municipalities and urban renewal entities to advance projects implementing a redevelopment plan for a duly designated redevelopment area; and

WHEREAS, the Project would be located in the Griffin Pipe Redevelopment Area and would be constructed in accordance with the Redevelopment Plan; and

WHEREAS, the LTTE further requires that financial agreements entered into pursuant to its terms be approved by a municipal ordinance; and

WHEREAS, the Township Committee desires to approve the Financial Agreement and authorize the Mayor to execute the same;

NOW THEREFORE BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FLORENCE as follows:

Section 1. **Recitals.** The recitals are fully incorporated herein.

Section 2. **Approval of the Financial Agreement.** The Financial Agreement substantially in the form attached hereto as Exhibit A, together with any non-substantive changes as may be required, are hereby approved.

Section 3. Execution of the Financial Agreement. The Mayor of the Township of Florence, in the County of Burlington (the "Mayor") is hereby authorized and directed, upon satisfaction of all the legal conditions precedent to the execution and delivery by the Township of the Financial Agreement, to execute the Financial Agreement in substantially the form of the draft attached hereto and with such non-substantive changes, insertions and omissions thereto as the Mayor, after consultation with counsel to the Township, deems in the Mayor's sole discretion to be necessary or desirable for the execution thereof, which execution thereof shall conclusively evidence the Mayor's consent to any such changes thereto.

Section 4. Attestation and Sealing of the Financial Agreement. The Clerk of the Township is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section 3 hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed thereupon affix the corporate seal of the Township upon such document.

Section 5. Implementation of the Financial Agreement. Upon the execution and attestation and placing of the seal on the Financial Agreement as contemplated by Sections 3 and 4 hereof, the Mayor and Township Administrator, together with the necessary staff and professionals of the Township, are hereby authorized and directed to (i) deliver the fully executed, attested and sealed document to the other parties thereto and (ii) perform such other actions as the Township Administrator deems necessary or desirable in relation to the execution and delivery of the Financial Agreement.

Section 6. Severability. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

Section 7. Availability Of The Ordinance. A copy of this Ordinance shall be available for public inspection at the offices of the Township.

Section 8. Effective Date. This ordinance shall take effect in accordance law.

Nancy L. Erlston, RMC
Township Clerk

Jerry Sandusky
Council President

I, Nancy Erlston, Township Clerk of the Township of Florence, Burlington County, New Jersey, do hereby certify the foregoing to be a true and exact copy of the ordinance which was finally adopted by the Township Committee at a meeting held on the _____ day of _____, 2019.

Nancy Erlston, RMC

EXHIBIT A

FORM OF FINANCIAL AGREEMENT

Long-Term Tax Abatement Agreement

N.J.S.A. 40A:20-1, et seq.

Financial Agreement

Between

IPT Florence West Urban Renewal LLC

and

The Township of Florence

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THIS FINANCIAL AGREEMENT, (hereinafter "Agreement" or "Financial Agreement") is entered into as of this _____ day of _____, 2020, by and between **IPT Florence West Urban Renewal LLC**, a Delaware Limited Liability Company qualified to do business in the State of New Jersey under the provisions of the Long-Term Tax Exemption Law, as amended and supplemented (N.J.S.A. 40A:20-1, et seq.) (hereinafter designated as the "**Entity**"), having its principal office at 518 17th Street, 12th Floor, Denver, Colorado, 08202, and the **Township of Florence**, a municipal corporation in the County of Burlington and State of New Jersey with offices at 711 Broad Street, Florence, New Jersey 08518 (hereinafter designated as the **Township** or the **Municipality**).

BACKGROUND

WHEREAS, on December 1, 2010, following a recommendation of the Township of Florence Planning Board (the "**Planning Board**"), the Mayor and the Township Council of the Township of Florence (the "**Governing Body**") adopted a Resolution designating the properties located at Block 179, Lots 1.02, 1.03, 1.04, 1.05 and Block 156.01, Lot 90 on the Official Tax Maps of the Township (the "**Griffin Pipe Properties Redevelopment Area**" or "**Redevelopment Area**") as an "area in need of redevelopment" pursuant to the Redevelopment Law and authorizing and directing the Planning Board to prepare a redevelopment plan for the Griffin Pipe Properties Redevelopment Area; and

WHEREAS, in accordance with the procedures and standards set forth in the Redevelopment Law, on December 7, 2016, the Township Council finally adopted an ordinance approving a redevelopment plan for the Griffin Pipe Properties Redevelopment Area (the "**Redevelopment Plan**"); and

WHEREAS, among other things, the Redevelopment Plan established permitted uses and development standards for redevelopment within the Redevelopment Area; and

WHEREAS, the Entity is the owner of a portion of the Griffin Pipe Properties Redevelopment Area, identified as Block 179, Lots 1.02, 1.03, 1.04 and 1.05 ("Property"); and

WHEREAS, the Entity has proposed the redevelopment of the Property which it currently or will shortly own and the construction of a facility on the Property consisting of an office, warehouse and distribution center and other uses permitted by applicable zoning and the Redevelopment Plan (the "**Project**"); and

WHEREAS, the Property has previously received necessary land use approvals for the Project and will apply to the Township Planning Board for any amendments to such approvals, if required, all of which will be in accord the Redevelopment Plan; and

WHEREAS, the Entity will construct, or cause to be constructed on the Property certain improvements (the "**Improvements**") consisting of facilities that are normally associated with such projects as shown on the approved plans and the exhibits to this Agreement; and

WHEREAS, the Improvements will consist, more or less, of a distribution building measuring approximately 508,200 square feet, as shown on the concept plan (the "**Concept Plan**")

WHEREAS, all insurance, operating and maintenance expenses for the Project shall be paid by the Entity who may in turn pass such expenses through to any tenants or subtenants; and

WHEREAS, in accordance with the Long-Term Tax Exemption Law, on [December 4, 2019], the Entity has submitted a written application (the "**Application**") to the Municipality for approval of a tax exemption for the Improvements a copy of which is annexed hereto as **Exhibit "A"**; and

WHEREAS, it is important to the viability of the Project for the payments in lieu of taxes thereon to be stable and ascertainable on a long-term basis; and

WHEREAS, on December 18, 2019, the Governing Body finally adopted Ordinance No. 2019-__ which authorized the execution of this Agreement; and

WHEREAS, the Municipality believes that exemption from taxation of the Property and Improvements pursuant to this Agreement and receipt by the Municipality of annual service charges in lieu of taxes allows maximum redevelopment of the Property and is, therefore, in the best interests of the Municipality and their residents and is in accordance with the provisions of the Long-Term Tax Exemption Law and the public purposes pursuant to which the redevelopment has been undertaken:

WITNESSETH:

NOW, THEREFORE, it is mutually covenanted and agreed as follows:

Article I - General Provisions

Section 1.1 Long-Term Tax Exemption Law and Application

This Agreement shall be governed by the provisions of the Long-Term Tax Exemption Law as amended and supplemented from time to time (N.J.S.A. 40A:20-1, et seq.). The Municipality expressly relies upon the facts, data, and presentations contained in the Application in granting the tax exemption as set forth herein. The Entity represents that the facts and data contained in the application are true in all material respects.

Section 1.2 General Definitions

Unless specifically provided otherwise or the context otherwise requires, the following terms, when used in this Financial Agreement, shall mean:

- (a) Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to each total project cost pursuant to the provisions of N.J.S.A. 40A:20-3c.
- (b) Allowable Profit Rate - The Allowable Profit Rate for the purpose of this Agreement is 12%. This rate has been calculated by using the greater of the Entity's permanent financing rate plus 1¼% and the rate permitted in accordance with N.J.S.A. 40A:20-3b.

- (c) Annual Service Charge - The amount the Entity has agreed to pay the Municipality in lieu of full taxation on the Improvements as set forth in Section 4.1, in accordance with N.J.S.A. 40A:20-12.
- (d) Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board, and which fully details all items as required by all state statutes, which has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State of New Jersey.
- (e) Certificate of Occupancy - The document issued by the applicable Municipality authorizing occupancy of a building.
- (f) Concept Plan - The conceptual site plan annexed hereto as **Exhibit "B"**.
- (g) Municipality - Township of Florence in the County of Burlington and State of New Jersey.
- (h) Default - The failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Financial Agreement following the expiration of any applicable grace, notice or cure period established under this Agreement.
- (i) Entity - The developer(s) of the Project, IPT Florence West Urban Renewal LLC, and all purchasers and any subsequent purchasers or successors in interest of the Project, who shall engage in no other business other than the ownership, operation and management of the Project so long as such entity is bound by and enjoying the benefits of this Agreement.
- (j) Annual Gross Revenue or Gross Revenue - The annual gross revenue or annual gross rents, as appropriate, and other income, received by the Entity. Gross Revenues shall not include any insurance or operating and maintenance expenses paid by any tenants or subtenants since landlords do not ordinarily pay such costs in projects of type forming the subject matter of this agreement. Gross revenues shall not include the proceeds of any condemnation, insurance refunds, sale or refinance of the Entity's interest in the Project, proceeds from sale of an interest in the Entity and deposits held on account, payments made by tenant or subtenant to the Entity to cover Annual Service Charges or any other fee payable by the Entity pursuant to this Agreement or applicable laws or payments made by tenants or subtenants to the Entity to cover amortized costs associated with the standard tenant improvements.
- (k) Improvements - Any building, structure or fixture permanently affixed to the land as defined in the recitals of this Agreement.

- (l) In Rem Tax Foreclosure - A summary proceeding by which the Municipality may enforce the lien of taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A. 54:5-1 et seq.
- (m) Land Taxes - The amount of taxes assessed on the value of land on which the Project is located. Land Taxes are not abated under this Agreement.
- (n) Land Tax Payments - Payments made on the quarterly due dates for land taxes on the real property as determined by the applicable tax assessor and/or Tax Collector of a Municipality.
- (o) Law - The Long-Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.
- (p) Minimum Annual Service Charge - The greater of: (i) the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation pursuant to N.J.S.A. 40A:20-12b(2)(e), (ii) ten percent (10%) of the Annual Gross Revenue of the Entity or (iii) the amounts set forth in **Exhibit "C"**, all as set forth in Section 4.1 (and subject to adjustment pursuant to Section 4.3) below.
- (q) Net Profit - The gross revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3c.
- (r) Project - The Property and the Improvements thereon which are the subject of this Agreement and as defined in the recitals of this Agreement.
- (s) Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular as well as the plural, as proper meaning requires.
- (t) Property - The land as defined in the recitals of this Agreement.
- (u) Land Use Approvals - The subdivision, site plan and other land use approvals for the Project as defined in the recitals of this Agreement.
- (v) Substantial Completion - The determination by the Municipality that the Project is ready for the use intended, as further defined in Section 6.2 of this Agreement.
- (w) Termination - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its long term tax exemption.

Section 1.3 Exhibits Incorporated

All Exhibits which are referred to in this Agreement and are attached hereto are incorporated herein and made a part hereof.

Article II - Approval

Section 2.1 Approval of Tax Exemption

Pursuant to Ordinance # 2019-__ of Florence Township, the Municipality has approved and does hereby grant a tax exemption from real estate taxes for all Improvements in the Project, constructed or acquired by Entity or its designee pursuant to the Law. The Entity represents and covenants that, effective upon Substantial Completion of the Project, the Entity shall use and operate or cause its tenants to use and operate the Project for the purposes set forth in the Application and this Financial Agreement, subject to any other requisite municipal approvals as required by applicable law and the conditions contained in any such approvals.

Section 2.2 Approval of Urban Renewal Entity

Subject to terms and conditions of the Land Use Approvals, the Municipality hereby grants approval of the Entity as a qualified "Urban Renewal" entity under the Law and approves construction of the Project on the Property, which construction shall in all respects comply and conform to the Law and all applicable statutes of the State of New Jersey, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the Application. The Entity is approved as a qualified Urban Renewal entity by the Department of Community Affairs of the State of New Jersey. A copy of the approved formation certificate is annexed hereto as **Exhibit "E"**. The Municipality agrees not to impose any development conditions on the Property and the Project not strictly called for by applicable provisions of the Municipal Land Use Law.

Article III - Duration of Agreement

Section 3.1 Term

So long as there is compliance with the Law and this Agreement, this Agreement shall remain in effect for twenty-five (25) years from January 1st of the calendar year following the date of Substantial Completion of the Project, subject to the further limitations and agreements contained herein, and shall only be effective and in force during the period of the Project's operations while said Project is owned by an Urban Renewal entity formed pursuant to N.J.S.A. 40A:20-5 and Title 15A of the New Jersey Statutes. After the expiration of the twenty-five (25) year time period (i) the tax exemption for the Project shall expire and the Project's Property and improvements located in the Municipality shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Municipality, and (ii) all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Municipality's acceptance of the Entity's final accounting. In no case shall this Agreement remain in effect longer than thirty-five (35) years from the date of Substantial Completion.

Article IV - Annual Service Charge

Section 4.1 Annual Service Charge

(a) In consideration of the exemption from taxation, the Entity shall make payments in lieu of taxes to the Municipality in the amounts set forth on **Exhibit C** (the Annual Service Charge). The parties further agree that, under N.J.S.A. 40A:20-12(2), years One through Ten shall constitute **Stage One**, **Years Eleven through Fifteen shall constitute Stage Two**, **Years Sixteen through Twenty shall constitute Stage Three**, **Years Twenty-one through Twenty-four shall constitute Stage Four** and **Year Twenty-five shall constitute the Final Stage**.

(b) The Annual Service Charge shall be calculated from the first day of the month following issuance by the Township of a Certificate of Occupancy or a determination by the Township of Substantial Completion of the Project, as set forth in Section 6.2. For the calendar year in which the Certificate of Occupancy is issued, the payments for such year shall be prorated based upon the first-year payment set forth on **Exhibit C** but shall not be counted against the twenty-five (25) year term of this Agreement. The first year of the twenty-five (25) year term of this Agreement shall commence on January 1st of the year following the calendar year in which the Certificate of Occupancy was issued.

(c) In no event shall the Annual Service Charge be less than the Minimum Annual Service Charge.

(d) The parties agree that the Annual Service Charge for the Project, prior to the application of any credit for Land Tax Payment, shall be \$355,740 (\$0.70 per square foot) for the first full year following Substantial Completion and shall continue thereafter as set forth on **Exhibit C**. The Annual Service Charge shall not be reduced through any tax appeal on the Property and/or the Improvements while this Agreement shall be in effect. Likewise, the Annual Service Charge shall not be affected by any revaluation or reassessment during the term of this Agreement unless taxable Improvements are made to the Property, in which case such Improvements shall be added to this exemption by agreement of the parties as negotiated by the parties prior to the construction of said Improvements and commencing upon the issuance of a Certificate of Occupancy for the subsequent phase as set forth in Section 4.1(b). In no event shall the annual service charge for a subsequent phase be greater than the sum of the amount to be raised by taxation of the local purpose tax and the school purpose tax that would be applied if the property were fully taxed. The duration of the tax exemption shall be twenty-five (25) years following completion of the Project as described in the Application. Notwithstanding the Annual Service Charges set forth in this Agreement, for the second stage of the exemption period, commencing on the 10th anniversary of the first day of the calendar year following the calendar year in which the Certificate of Occupancy was issued and continuing for a period of five (5) years, the Annual Service Charge shall be (a) the amount on **Exhibit C** or (b) twenty (20%) percent of the amount of taxes otherwise due to the Municipalities on the value of the Property and the Improvements, whichever shall be greater. Notwithstanding the Annual Service Charges set forth on **Exhibit C**, for the third stage of the exemption period, commencing on the 15th anniversary of the first day of the calendar year following the calendar year in which the Certificate of Occupancy was issued and continuing for a period of five (5) years, the adjusted Annual Service Charge shall be (a) the amount on **Exhibit C** or (b) forty (40%) percent of the

amount of taxes otherwise due to the Municipalities on the value of the Property and the Improvements, whichever shall be greater. Notwithstanding the Annual Service Charges set forth on **Exhibit C**, for the fourth stage of the exemption period, commencing on the 20th anniversary of the first day of the calendar year following the calendar year in which the Certificate of Occupancy was issued and continuing for a period of four (4) years, the adjusted Annual Service Charge shall be (a) the amount on **Exhibit C**, or (b) sixty (60%) percent of the amount of taxes otherwise due to the Municipalities on the value of the Property and the Improvements, whichever shall be greater. Notwithstanding the Annual Service Charges set forth on **Exhibit C**, for the final stage of the exemption period, commencing on the 24th anniversary of the first day of the calendar year following the calendar year in which the Certificate of Occupancy was issued, the adjusted Annual Service Charge shall be (a) the amount on **Exhibit C** or (b) eighty (80%) percent of the amount of taxes otherwise due to the Municipalities on the value of the Property and the Improvements, whichever shall be greater.

(e) The figures set forth above in Section 4.1(d) reflects the understanding of the Parties that at the time of the issuance of the initial Certificate of Occupancy, the Improvements will consist of 508,200 square feet of office, warehouse and distribution center space and is based upon an initial per square footage rate of \$0.70 per square foot. To the extent that on or after the initial Certificate of Occupancy, the Improvements (i) exceed 510,000 square feet, (ii) receive a Certificate of Occupancy for the square footage in excess of 510,000 square feet on or before January 1, 2021 and (iii) the Master Lessee has leased the entirety of the Improvements to one tenant or subtenant, the Township shall be entitle to a higher Annual Service Charge based on the actual square footage of the Improvements subject to a Certificate(s) of Occupancy multiplied by the rate set forth in Column B of **Exhibit C** for the payment year set for in Column A of **Exhibit C**. To the extent that each of these conditions are not satisfied, an Annual Service Charge for improvements in excess of the original 510,000 square feet (as opposed to taxation in a conventional manner) shall only be due if a further agreement to a Tax Exemption pursuant to the Law is negotiated between the Entity and the Township. Absent such agreement, Improvements in excess of the original 510,000 square feet shall not be benefited by a Tax Exemption and shall be subject to conventional taxation.

Section 4.2 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge(s) shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over- or underpayment within thirty (30) days after close of the Municipality's fiscal year. In the event that the Entity fails to timely pay any quarterly installment, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the Property until paid.

Section 4.3 Land Tax Credit

The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payment (as defined in Section 1.2(t) paid by it in the last four preceding quarterly installments against the Annual Service Charge. The Entity is obligated to make Land Tax Payments and shall receive a credit in the amount of such payments against the Annual Service Charge for each subsequent year. The Entity's failure to make the requisite Annual Service Charge payment

and/or sewer and water charge payments in a timely manner shall constitute a breach of the Financial Agreement and the Municipality shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, *et seq.* Notwithstanding the foregoing, the net Annual Service Charge shown in Column I of **Exhibit "C"**, as it may be adjusted pursuant to Section 4.1(d), shall be a guaranteed minimum to the Township. To the extent that the Land Tax Credit would reduce the amounts shown in this column, either (i) because a contemplated subdivision of the vacant portions of the Property from the Project does not occur, (ii) because of greater than contemplated increases in the land tax (provided that such increases are the result of normal assessment and budget issues and of an assessment applied uniformly in accordance with law across all similarly classified users), or (iii) any other lawful reason, the Annual Service Charge shall be adjusted to provide the minimum guaranteed amount to the Township set forth in Column I. The Entity shall have the right to appeal any land tax assessment that violates the uniformity provisions of the tax assessment laws and regulations of New Jersey.

Section 4.4 Material Conditions

All payments of Land Tax Payments, Annual Service Charges (including the methodology of computation thereof), water and sewer charges, and any interest payments due, are material conditions of this Agreement.

The Municipality relies exclusively on this Agreement in determining the Annual Service Charge payable to the Municipality over the term of this Agreement. Any material alteration, amendment or change, to the Master Lease affecting the Project shall be subject to the prior approval of the Governing Body by resolution, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Master Lease may be amended without notice or approval of the Municipality, provided such amendment does not affect the Gross Revenue payable to the Entity and so long as it does not materially affect any of the other obligations of the Entity set forth in this Agreement.

Article V - Dispute Resolution

Section 5.1 Dispute Resolution

All disputes between the parties arising out of this Agreement shall be resolved by binding arbitration by a single arbitrator in accordance with the rules of the American Arbitration Association for commercial arbitrations. Any award rendered in any such arbitration shall be final and binding on the parties and judgment thereon may be entered in a court of competent jurisdiction. The prevailing party in such arbitration shall be entitled to recover its costs and attorney's fees as part of the award.

Section 5.2 Remedies

In the event of a Default on the part of the Entity to pay the Annual Service Charge as defined in Article IV above, the Municipality shall have the rights and remedies set forth in Article XIV of this Agreement. Whenever the word "Taxes" appears, or is implied directly or indirectly, to mean taxes or municipal liens on land, such statutory provisions shall be read, as

far as is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land.

Article VI - Certificate of Occupancy

Section 6.1 Certificate of Occupancy

It shall be the obligation of the Entity to make application for and make all best efforts to obtain all Certificates of Occupancy in a timely manner as identified in the Application.

Section 6.2 Substantial Completion

The Annual Service Charge is to commence from the first day of the month following the Substantial Completion of the Project, subject to the provisions of Section 4.1(b). The phrase "Substantial Completion" denotes the issuance, by the Municipality's Construction Official, of any valid Certificate of Occupancy for all, or any part of, the Project's structure.

Section 6.3 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, the Tax Collector and the Chief Financial Officer of the Municipality a copy of any Certificate of Occupancy.

Article VII - Annual Audits - Profit Limitations

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles and as otherwise prescribed in the Law while this Agreement is in effect.

Section 7.2 Periodic Reports

Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, that this Agreement shall continue in effect, the Entity which administers and manages the Project shall submit its Auditor's Report certified by a certified public accountant for the preceding fiscal or calendar year (i) to the Clerk of the Municipality (or any other representative of the Municipality as may be designated in a notice to the Entity), who shall advise those municipal officials of such Municipality required to be advised, and (ii) to the Director of the Division of Local Government Services in the Department of Community Affairs, as required under N.J.S.A. 40:A:20-9(d). Said Auditor's Report shall include, but not be limited to the following information for the fiscal or calendar year covered by such Auditor's Report: Gross Revenues of the Project, and the terms and interest rate on any mortgage(s) associated with the Project, the Allowable Net Profit and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law.

After completion of the Project, the Entity agrees to submit a report of the total cost of the Project within ninety (90) days after Substantial Completion of the Project.

Section 7.3 Inspection

The Entity shall permit the inspection of the Property, equipment, buildings and other facilities of the Project by the Municipality. It also shall permit, upon request, but not more frequently than annually, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Municipality. Such examination or audit shall be made following reasonable advance written notice, during reasonable hours of the business day, in the presence of an officer or agent of the Entity.

Section 7.4 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to limitation of its profits payable pursuant to the provisions of N.J.S.A. 40A:20-15. The Municipality and the Entity acknowledge that such limitation shall apply solely to the Gross Revenues received by the Entity under the Entity's lease of the Property to an end user or users (collectively the "Lease") after deduction of all operating and non-operating expenses of the Entity allowed under the Law in computing Net Profit and it shall not result in any Net Profits that exceed the Allowable Net Profits.

The Entity shall have the right, but not the obligation, to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten (10%) percent of the Gross Revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted Net Profits as provided in N.J.S.A. 40A:20-15, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten (10%) percent of the preceding year's gross revenues as aforesaid.

Section 7.5 Payment of Dividend and Excess Profit Charge

In the event the Net Profit of the Entity should at any time exceed the Allowable Net Profits, the Entity shall, within ninety (90) days after the end of such fiscal year, pay such excess profit to the Municipality as an additional service charge hereunder; provided, however, that the Entity may maintain any reserves permitted by N.J.S.A. 40A:20-3(b)(1) or 40A:20-15.

Article VIII - Assignment and/or Assumption

Section 8.1 Sale of Project

The Entity shall not voluntarily transfer more than ten (10%) percent of the ownership of the Property, with the exception of a transfer to another Urban Renewal entity approved by the Municipality, which approval shall not be unreasonably withheld, conditioned or delayed, unless it has removed both itself and the Project from all restrictions of the Law in the manner prescribed therein. The Municipality will consent to the transfer to an eligible and duly qualified Urban Renewal entity under the Law, without removal of such restrictions, upon written application and full assumption of the obligations under this Agreement by the transferee. Upon such transfer and assumption of obligations, the Entity shall be relieved of any further liability or limitations under this Agreement, and the tax exemption with respect to periods after the transfer will inure to the benefit of the transferee.

Section 8.2 Operation of Project

At all times while this Agreement is in effect, the Project shall be operated in accordance with the provisions of the Law.

Section 8.3 Continued Application of the Law

At all times prior to the expiration or termination of this Agreement, the Entity and all successors and assigns shall remain bound by the provisions of the Law.

Section 8.4 Subordination of Fee Title

The Entity shall have the right to encumber the fee title to the Property and may encumber or assign for security purposes the Entity's interest in this Agreement and/or the Master Lease, and any such encumbrance or assignment shall not be deemed to be a Default under this Agreement.

Article IX - No Waiver By Municipalities

Section 9.1 No Waiver By Municipality

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Municipality of any rights and remedies. Nothing herein shall be deemed to limit any right of recovery of any amount which the Municipality has under law, in equity, or under any provisions of this Agreement.

Article X - Notice

Section 10.1 Notice

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

- (a) When sent by the Municipality to the Entity it shall be addressed as follows:

IPT Florence West Urban Renewal LLC
518 17th Street, 12th Floor
Denver, Colorado, 08202
ATTN: Chief Financial Officer, Tom McGonagle

With copy to:

Christopher H. DeGrazia
Drinker Biddle & Reath LLP
105 College Road East, P.O. Box 627
Princeton, NJ 08542-0627
Christopher.DeGrazia@dbr.com

With copy to:

Josh Widoff
IPT Florence West Urban Renewal LLC
c/o Black Creek Group
518 17th Street, Suite 1700
Denver, CO 80202
Attn: General Counsel

With copy to:

Jim Murray
Industrial Property Trust
Black Creek Group
301 Route 17 North, Suite 206
Rutherford, NJ 07070
jim.murray@blackcreekgroup.com

When sent by the Entity to the Municipality, it shall be addressed to:

Richard Brook, Administrator
Township of Florence
711 Broad Street
Florence, New Jersey 08518

With a copy to:

Thomas J. Hastie, Jr., Esquire
Malamut & Associates, LLC
457 Haddonfield Road
Cherry Hill NJ 08002

And with copies sent to the Municipal Attorney, Tax Collector, Tax Assessor, and the Chief Financial Officer for the Municipality, unless prior to the giving of notice the Municipality shall have notified the Entity otherwise.

Any party may change the address for notices hereunder by a notice sent in accordance with this Article X.

Article XI - Compliance

Section 11.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the provisions of all applicable state statutes and municipal

ordinances and regulations including, but not limited to, the Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement.

Article XII - Construction

Section 12.1 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn, since counsel for both the Entity and the Municipality have combined in their review and approval of same.

Article XIII - Default

Section 13.1 Event of Default

Default by the Entity shall be failure of the Entity to conform with the terms of this Agreement herein and failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation.

Section 13.2 Cure Upon Default

Should the Entity be in Default, the Municipality shall notify the Entity in writing of said Default, stating with specificity the basis of said Default. The Entity shall have thirty (30) days to cure any Default, provided such Default is capable of cure within thirty (30) days. If the Default is not capable of cure within thirty (30) days, the Entity shall have a reasonable period of time to cure such Default, not to exceed ninety (90) days (the "**Cure Period**"). Subsequent to the expiration of the Cure Period, the Municipality shall have the right to proceed against the Property pursuant to In Rem Tax Foreclosure. In addition, after notice and expiration of the Cure Period, if the Default for which notice was given remains uncured, the Municipality may terminate this Agreement. In such event, however, the Entity does not waive any defense it may have to contest the right of the Municipality to proceed in the above mentioned manner by conventional or In Rem Tax Foreclosure just as it would have if the Entity had not received the tax exemption granted under Section 2.1..

Section 13.3 Remedies Upon Default Cumulative; No Waiver

All of the remedies granted to the Municipality by this Agreement, or available by law and in equity, shall be cumulative and concurrent. No determination of invalidity of any provision within this Agreement shall deprive the Municipality of any of their remedies or actions against the Entity because of its Default (after the expiration of any applicable grace, notice or cure period) under this Agreement. The bringing of an action for collection of Land Tax Payments, Annual Service Charges, or other charges, or for any other Default hereunder, or the resort to any other remedy for the recovery of Land Tax Payments, Annual Service Charges, water and sewer charges, or other charges, shall not be construed as a waiver of the right to terminate the tax exemption or proceed with In Rem Foreclosure action or any other remedy.

Article XIV - Final Accounting

Section 14.1 Final Accounting

Upon any termination of the tax exemption provided by this Agreement, whether by affirmative action of the Entity, by virtue of the provisions of the Law, or pursuant to the terms of this Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Entity. At the end of the period of tax exemption granted, the Property located within the Municipality shall be assessed and taxed according to general law, like other property in such Municipality. At the same date, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering its Final Accounting to the Municipality, and the Municipality's acceptance thereof, pursuant to N.J.S.A. 40A:20-13.

Article XV – Miscellaneous

Section 15.1 Conflict

The parties agree that in the event of a conflict between the Application and this Agreement, the provisions of this Agreement shall govern and prevail.

Section 15.2 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Municipal Resolution or Ordinance authorizing this Agreement, and the Application constitute the entire agreement between the parties, and there shall be no modification thereto other than by a written instrument executed by all parties and delivered to each.

Section 15.3 Entire Document

This Agreement and all conditions in the Resolution or Ordinance of the Governing Body of the Municipality approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 15.4 Good Faith

In their dealings with each other, utmost good faith is required from the Entity and the Municipality.

Section 15.5 Grammatical

The bracketing of the letter(s) at the end of a word such as unit(s) shall mean the singular or plural, as proper meaning requires, and all related verbs and pronouns shall be made to correspond.

Section 15.6 Recording

Either this entire Agreement or a memorandum hereof may be filed and recorded with the Clerk of Burlington County by any of the parties.

Section 15.7 Municipal Services

The Entity or Master Lessee shall make payments for municipal services, including water and sewer charges, as required by the applicable statutes or ordinances.

Section 15.8 Financing Matters

The plans for financing the Project are as follows:

The total Project cost is estimated to be \$18,552,660, which may be financed by debt instruments as determined by the Entity. The source of the balance of the funds for the Project is paid in capital or internal intercompany financing from affiliated entities. The comparable interest rate for permanent financing of similar projects is estimated to be eight (8%) percent. Paid-in capital of the Entity has come from capital funds and borrowings, and the proposed lease terms with respect to the Project are intended to require tenants to pay annual rent to the Entity in the amounts and at the times sufficient to enable the Entity to pay the Annual Service Charges.

Section 15.9 Municipal Determinations

Pursuant to N.J.S.A. 40A:20-11, the Municipality hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Municipality because it allows for redevelopment of the Property into productive, useful and job-creating property. The Township has concluded that that (i) although the property has been vacant for a long period, the investment to return the property to a productive asset will result in a direct benefit for the health, welfare and financial well-being of the Township because it allows for redevelopment of the Property into productive, useful and job-creating property. In addition, it has been determined that the Project will not move forward without the inducements contained in this agreement. Further:

a. The costs associated with the tax exemption granted herein are minimal compared to the total Project cost of approximately \$18,552,660 (including "soft" costs), and the benefit created in the first several years by approximately 200 temporary construction jobs and up to 75 permanent jobs with an expected annual payroll of approximately \$3,000,000.

b. Without the tax exemption granted herein, the Entity will not proceed with the Project. This agreement is a material inducement to the construction of the Project.

c. The projected investment and job estimates are a material consideration to the Township in granting the exemption and the payment of the Annual Service Charge as set forth in the Financial Agreement (as hereinafter defined).

Section 15.10 Invalidity

If any term, covenant or condition of this Financial Agreement or the Application shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 15.11 Counterparts

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15.12 Amendments

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of each party hereto.

Section 15.13 Headings

The section headings in this Agreement are for convenience only; and shall not be deemed to add or subtract to the meaning of the text of this Agreement.

Section 15.14 Other Approvals

The effectiveness of this Agreement is subject to the receipt by Entity of all federal, state, county and municipal approvals required for the construction and operation of the Project.

Section 15.15 Other Provisions

- (a) The Municipality and the Entity agree that the redevelopment of the Property is for a public purpose to redevelop and restore underutilized, deteriorated or neglected properties. The granting of this tax exemption is to encourage private capital to participate in and contribute toward such public purpose as a permissible special financial arrangement permitted under N.J.S.A. 40A:20-2. Accordingly, the values, assessments and Annual Service Charges set forth herein shall not be considered by either party or any third party as indicative or evidential of value in any tax appeal, condemnation or other proceeding in which the value of the Property or any other property would be directly or indirectly contested.
- (b) The Entity shall:
 - (i) Not effect or execute any agreement, lease, conveyance, or other instrument whereby the use of the Improvements, or any part thereof, is restricted or discriminated upon the basis of race, color, creed, religion, ancestry, national origin, sex, or marital status, in the sale, lease or occupancy of the Project, and shall comply with all state and local laws, in

effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, sex or marital status.

- (ii) Observe and comply with all applicable federal and state laws and local ordinances, and any other applicable laws or governmental rules and regulations that apply to the Project and its operations.
 - (iii) Upon written request of the Municipality as provided below, but not more frequently than annually, permit inspection of the Property and the Improvements, and to permit examination and audit of any of the books, contracts, records, documents and papers of the Entity (but not of any lessee or any sublessee) relating to this Agreement, by duly authorized representatives of the Municipality, provided same are during normal business hours upon not less than ten (10) business days' notice, and in the presence of designated representatives of the Entity. This provision shall not be construed to limit the right of the Municipality under and pursuant to its police powers to conduct inspections of the Property and the Improvements without written or advance notice, as permitted by law.
 - (iv) Remain in existence as an urban renewal entity while this Agreement is in effect, and to take whatever steps may be necessary to amend its Certificate of Formation and Operating Agreement to effectuate this covenant.
- (c) The Land Use Approvals and the approved site plan are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

A T T E S T:

IPT FLORENCE WEST URBAN
RENEWAL LLC

Secretary

By: _____
Name:
Title:

A T T E S T:

TOWNSHIP OF FLORENCE

Nancy Erlston, Township Clerk

By: _____
Craig H. Wilke, Mayor

EXHIBITS

Exhibit A.	Application
Exhibit B.	Concept Plan
Exhibit C.	Annual Service Charge Schedule
Exhibit D.	Township Approvals
Exhibit E.	Entity Formation Certificate

FLORENCE TOWNSHIP
ORDINANCE 2019-29
NOTICE OF PENDING ORDINANCE AND SUMMARY

PUBLIC NOTICE IS HEREBY GIVEN that an ordinance, the summary terms of which are included herein, was duly introduced and passed upon first reading at a regular meeting of the Township Council of the Township of Florence, in the County of Burlington, New Jersey, held on December 4, 2019. It will be further considered for final passage and adoption, after public hearing thereon, at a regular meeting of said Township Council to be held in the Municipal Building, 711 Broad Street, Florence, New Jersey on December 18, 2019 at 8:00 o'clock p.m. During the week prior to and up to and including the date of such meeting, copies of the full ordinance will be made available at no cost and during regular business hours, at the Township Clerk's office in the Municipal Building to the members of the general public who shall request the same. The summary of the terms of such ordinance follows:

Title: **ORDINANCE AUTHORIZING THE TOWNSHIP OF FLORENCE, IN THE COUNTY OF BURLINGTON, NEW JERSEY TO ENTER INTO A FINANCIAL AGREEMENT BETWEEN THE TOWNSHIP AND IPT FLORENCE WEST URBAN RENEWAL, L.L.C. FOR CERTAIN PROPERTY WITHIN THE GRIFFIN PIPE PROPERTIES REDEVELOPMENT AREA**

Summary: Block 179, Lots 1.02, 1.03, 1.04 and 1.05 on the Tax Map of Township of Florence (the "**Property**") is located in the Griffin Pipe Properties Redevelopment Area. The Township has adopted a redevelopment plan for the Property. The redevelopment plan is designed to facilitate development of warehouse and distribution space, with a building of approximately 508,200 square feet, together with related site improvements, to be constructed on the Property.

This ordinance would approve a tax exemption for the building to be constructed on the Property. In exchange for the tax exemption for the building, the Township would receive scheduled payments in lieu of taxes (called "Annual Service Charges") pursuant to a Financial Agreement to be approved by the Ordinance. The term for the Tax Exemption would be 25 years from the first day of the year following the year in which a certificate of occupancy is issued for the building. The authorization for the Township to enter into the Financial Agreement is granted under Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., which authorizes financial agreements as an incentive to construct projects in accordance with a redevelopment plan.

Copies of the Ordinance, the Financial Agreement to be approved thereunder and the schedule of Annual Service Charges are available for public inspection in the Office of the Florence Township Clerk, 711 Broad Street, Florence, NJ 08518.

Nancy L. Erlston, RMC
Township Clerk